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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Lang, et al.
Serial No. : 09/647,882
Group Art Unit : 1761
Filed : October 4, 2000 (102e)
Examiner : H. Lilling
For : Food Supplement

FAX RECEIVED

AUG 08 2002

GROUP 1600

OFFICIAL

Commissioner for Patents
Washington, D. C. 20231

RESPONSE TO AND REQUEST FOR REISSUANCE OF OFFICE ACTION

Sir:

In response to the Examiner's office action dated May 10, 2002, pursuant to the previously submitted Examiner's restriction requirement in the above-referenced patent application and Applicants' decision to provisionally elect with traverse to prosecute the invention set forth in Group I (claims 1-24), which is drawn to a food supplement, Applicants respectfully request the Examiner to reissue the May 10, 2002 office action.

The Examiner, in issuing the May 10 office action, has inadvertently withdrawn Applicants' elected claims (claims 1-24) from the application and has instead sought to examine claims 34-39, which are in invention Group III. Given that the present office action has examined claims which Applicants did not specifically elect, it is respectfully submitted that Applicants response to the outstanding office action would result in administrative inefficiency.

Consequently, Applicants request the Examiner to reissue an office action with claims 1-24 of the elected invention being examined, setting a date for response as of the mailing date of the new response. No further attempt has been made to address any of the outstanding issues in

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August 8, 2002

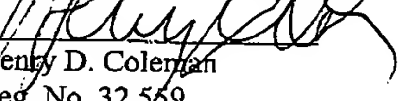
the pending office action, inasmuch as those issues are not considered by the Applicants to be ripe for further review/discussion, without consideration of claims 1-24.

Applicants attempted to reach the Examiner by telephone earlier today (August 8, 2002) to have the Examiner reissue the office action without having Applicants file a response. The Examiner's voice mail indicated he would be out of his office until August 19- a date which is after the due date for filing this response. Purely to avoid payment of an extension fee, Applicants filed this response.

This is a *bona fide* response to the outstanding office action, given the circumstances. No claim has been added or cancelled from the pending application. No fee is therefore due for the presentation of this amendment. If any fee is due for the presentation of this response, the Commissioner is authorized to charge deposit account no. 04-0838.

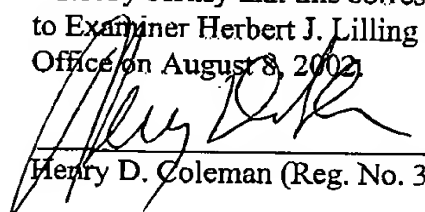
Dated: 8/8/02

Respectfully submitted,
Coleman Sudol Sapone PC

By: 
Henry D. Coleman
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being sent by facsimile transmission to Examiner Herbert J. Lilling in Group Art Unit 1651 of the United States Patent Office on August 8, 2002.


Henry D. Coleman (Reg. No. 32,559)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Lang, et al.
Serial No. : 09/647,882
Group Art Unit : 1761
Filed : October 4, 2000 (102e)
Examiner : H. Lilling
For : Food Supplement

Commissioner for Patents
Washington, D. C. 20231

ELECTION OF INVENTION AND RESPONSE

Sir:

In response to the Examiner's correspondence dated July 31, 2001, pursuant to the Examiner's restriction requirement in the above-referenced patent application, Applicants provisionally elect with traverse to prosecute the invention set forth in Group I (claims 1-24), which is drawn to a food supplement.

Notwithstanding Applicants provisional election of the invention of Group I, Applicants nonetheless respectfully request that the Examiner give consideration to examining the claims of Group III, i.e., claims 34-39, along with the claims of Group I, inasmuch as all of these claims relate to a food supplement or agent derived from fibre extracts from two or more types of fruits or vegetables. Accordingly, Applicants respectfully submit that the Examiner should favorably consider examining all of the claims of Groups I and III (i.e., claims 1-24 and 34-39) in this application.

In addition, Applicants respectfully request the Examiner to withdraw the requirement for restriction in this application. Restriction in this case clearly does not meet the policy goals for

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requiring restriction in limited instances at the discretion of the Examiner pursuant to M.P.E.P. §803. According to this rule, restriction by the Examiner of patentably distinct inventions is proper if the claimed inventions are independent and a serious burden would be placed on the Examiner if restriction was not required. Applicant respectfully submits that the presentation of all of the originally filed claims would not place such a serious burden on the Examiner as to require restriction. Because all of the originally filed claims are directed to related food supplements, food products, agents and methods of making the supplements, the examination of all of the claims would be in compliance with the MPEP.

Although the claimed inventions, in certain instances, are clearly patentably distinct from each other, Applicants respectfully submit that any search the Examiner would need to conduct in examining all of the claims of the instant application would not be unduly burdensome. It is respectfully submitted that the field of the search, is not particularly broad, but is actually well defined in the food supplement and food processing arts. Thus, it is respectfully submitted that the examination of all of the originally filed claims in the instant application would not place a serious burden on the Examiner as to require restriction.

In determining the appropriateness of restriction, the Examiner should give serious consideration to the countervailing view that Applicants wish the Patent Office to examine his or her application with "administrative efficiency" such that the filing of divisional applications is not mandated to secure adequate protection which reflect the breadth of his or her invention, which add further costs and time delay. The present restriction, if carried out, would create reduced judicial/administrative efficiency and, it is respectfully submitted, contravenes the general policy to which the application of the MPEP to the patent examination process must adhere.

Applicants understand the general policy considerations for the Patent Office's requirement for restriction in certain instances. These policy considerations relate to the efficient use of the Examiner's time and other resources of the Patent Office in examining the increasing number of

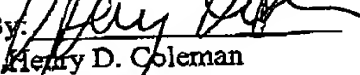
patent applications filed each year. In this instance, however, those considerations clearly do not weigh in favor of restricting the inventions here, but instead, when taken with the patent owner's desire to limit the legal and administrative costs of securing patent protection, strongly weigh in favor of examining all of the claims of the instant application.

Applicants respectfully submit that the claims of the present application are sufficiently narrow to allow the Examiner to determine patentability all of the claims without being subjected to the serious burden referred to in M.P.E.P. §803. Consequently, Applicant respectfully requests that the Examiner withdraw the restriction requirement. However, should the Examiner still believe that the claims of the instant application must be restricted, Applicants respectfully request the Examiner to give careful and favorable consideration to examination of all of the claims of Groups I and III.

The Examiner is respectfully requested to call the undersigned attorney at the number set forth below, should there be a need to discuss this restriction requirement and Applicants proposed withdrawal of the restriction requirement or election of all of the claims of Groups I and III.

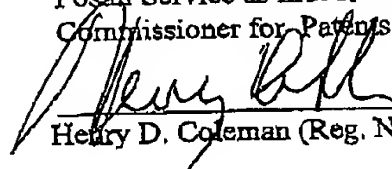
Dated: 8/28/01

Respectfully submitted,
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to:
Commissioner for Patents, Washington, D.C., 20231, on August 28, 2001.


Henry D. Coleman (Reg. No. 32,559)

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August 28, 2001